



2024:DHC:7171



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 19th September, 2024**
+ **C.R.P. 185/2023 & CM APPL. 35983/2023**
DIVJYOT SINGH SAINI AND ANRPetitioners
Through: **Mr. Akash Sehrawat, Advocate.**

versus

SATISH CHANDER BHARDWAJ AND ORSRespondents
Through: **Mr. Ranjan Kumar Rai, Advocate for R1.**
Mr. Hemant Baisla & Mr. Hemant Kumar Niranjana, Mr. Suresh Pal, Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

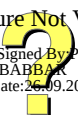
1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ("CPC" hereinafter) has been filed on behalf of the petitioner seeking setting aside of the impugned order dated 8th June, 2023, passed by learned Additional District Judge-03, South-West District, Dwarka Courts, Delhi in CS DJ ADJ No. 393/2020 titled as "**Satish Chander Bhardwaj & Anr vs. Divjot Singh Saini & Ors.**", wherein the application under Order VII Rule 11 of the CPC filed by the petitioners was dismissed.

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2. Brief facts of the instant matter that led to the filing of the instant revision petition are as follows:

- (i) The respondent nos. 1 and 2 (plaintiffs in the civil suit), are brother and sister of Mr. Harish Chander Bhardwaj, i.e., respondent no.3 herein and Ms. Kajol Bhardwaj, who is respondent no.4 herein, is his daughter. In the aforementioned civil suit, the petitioners herein are impleaded as defendant nos. 1 and 2 respectively, whereas, the respondent no.3 and respondent no.4 have been impleaded as defendants no. 3 and 4, respectively.
- (ii) By way of General Power of Attorney ("GPA" hereinafter) and an agreement to sell dated 15th February, 1983, late Mr. Amba Dutt, i.e., the father of the respondents no. 1, 2 and 3, purchased a plot admeasuring 300 Sq. Yards, situated in Khasra no. 88/3, Mahavir Enclave, New Delhi ("suit property" hereinafter), in the name of their mother, late Smt. Basanti Devi and their youngest son, respondent no. 3, i.e., Mrs. Harish Chander Bhardwaj, thereby, dividing an equal share of 150 square yards each.
- (iii) Thereafter, a registered gift deed dated 13th February, 2019 was executed by respondent no. 3 in favour of his daughter, i.e., respondent no. 4, with respect to the suit property which was subsequently sold by her to petitioner no.1 herein, by way of two registered sale deeds dated 6th March, 2019 and 16th April, 2019,





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pursuant to which, petitioner no.1 became the owner of the suit property and has been in physical possession of the same till date.

- (iv) Being aggrieved of the aforesaid events, the respondent nos.1 and 2, filed a civil suit bearing CS no. 393/2020 and prayed for a decree of declaration against all the defendants thereby seeking relief of cancellation of the sale deeds dated 6th March, 2019 and 16th April, 2019 as well as the gift deed dated 13th February, 2019, and to hand-over the suit property for peaceful possession to the respondents no.1 and 2. Furthermore, a prayer seeking permanent injunction was also made in the aforesaid suit against the defendants no.1 and 2 (petitioners herein) from selling and creating third party interest or raising constructions in the suit property.
- (v) In response to the aforesaid suit, the petitioners filed an application under Order VII Rule 11 of the CPC for rejection of the plaint before the learned Trial Court.
- (vi) Thereafter, the learned Trial Court *vide* order dated 8th June, 2023 (“impugned order” hereinafter) dismissed the aforesaid application on the ground that the issues raised in the same were of triable nature.
- (vii) Aggrieved by the same, the instant revision petition has been instituted by the petitioners herein seeking the setting aside of the impugned order.





3. Learned counsel appearing on behalf of the petitioners submitted that the learned Trial Court failed to appreciate the settled position of law while deciding the application and passed the impugned order without proper application of judicial mind.

4. It is submitted that while passing the impugned order, the learned Trial Court failed to appreciate the grounds and objections taken by the petitioners in the said application under Order VII Rule 11 of the CPC.

5. It is submitted that the learned Trial Court failed to appreciate the well-settled principle of law in deciding the application under Order VII Rule 11 of the CPC, that only the plaint and the documents filed therewith are to be considered, and no reliance can be placed on the written statement of the defendants.

6. It is submitted that the learned Trial Court failed to appreciate the settled position of law enunciated by this Court in ***Bishan Chand v. Ved Prakash*, 2018 SCC OnLine Del 11408** and ***Prerna Seemar Kalra vs. Pramod Anand & Ors.* 2018 SCC OnLine Del 10054**, that a mere agreement to sell or a GPA transaction does not confer any right, title or interest in an immovable property. It is submitted that accordingly, the suit is barred under Section 34 of the Special Relief Act, 1963 (hereinafter “the Act”).

7. It is also submitted that the respondents no. 1 and 2 have no *locus standi* to assert any right or claim of any ownership rights over the suit





property as the said GPA and agreement to sell dated 15th February, 1983 is unregistered and unstamped.

8. Learned counsel appearing on behalf of the petitioner placed reliance on the judgment passed by the Gujrat High Court in ***Keshavlal Laxmandas Patel vs. Narsinhbhai Kalidas Patel & Anr, 1976 AIR (Guj) 154*** and submitted to the effect that the learned Trial Court failed to appreciate the law laid down in the aforesaid judgment that a declaratory relief under Section 34 of the Act can only be granted to a person having legal right, title or interest in the suit property. Moreover, the suit for declaration is barred under the provisions of Section 41(h) of the Act.

9. It is submitted that the learned Trial Court failed to take into consideration that the respondents no. 1 and 2 have not sought declaration/cancellation of the transfer documents dated 20th June, 1983 and 16th March, 1987 executed in favour of the respondent no.3, on the basis of which, the gift deed dated 13th February, 2019 as well as the sale deeds dated 6th March, 2019 and 16th April, 2019 have been executed.

10. It is submitted that in case the suit is decreed in favour of the respondents no.1 and 2, even then no right, title, or interest would accrue in their favour unless the aforementioned transfer documents are declared null and void.

11. It is further submitted that the learned Trial Court erred in dismissing the application filed under Order VII Rule 11 of the CPC as the suit was liable to be rejected in terms of the provisions of Sections 3(2) and 4 of the





Benami Transactions (Prohibition) Act, 1988. Moreover, it is submitted that this issue was framed by the learned Trial Court *vide* order dated 23rd December, 2022, however, the reasoning in respect to the same is left unanswered in the impugned order.

12. Therefore, in view of the foregoing submissions, it is prayed that the impugned order passed by the learned Trial Court may be set aside and the reliefs may be granted as prayed.

13. *Per Contra*, learned counsel appearing on behalf of the respondents no. 1 and 2 vehemently opposed the instant petition submitting to the effect that the learned Trial Court rightly adjudicated the matter by thoroughly examining the material placed on record, hence, the instant petition is bereft of any merits.

14. It is submitted that the learned Trial Court rightly dismissed the petitioner's application as the issues are triable in nature in view of the fact that the respondent no. 3 has no legal character or right to gift the entire suit property consisting of 300 square yards in the name of his daughter, i.e., respondent no.4, as he is not the absolute owner of the same.

15. It is submitted that the institution of the instant petition is an abuse of law as it has been filed with a *mala fide* intent to grab the entire suit property of 300 square yards, situated at a prime location, on the basis of a forged GPA gift deed and sale deed. It is further submitted that the gift deed dated 14th February, 2019 is also a fabricated document, therefore, respondent no.4 was not the absolute owner of the entire suit property consisting of 300 sq.





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yards and she had no legal character or right to transfer the same to the petitioners.

16. It is submitted that the petitioners herein work as land grabbers/property grabbers and constantly adopt measures to snatch the suit property by relying upon false, fabricated and concocted documents and therefore, there exists no merit in filing the instant petition.

17. It is submitted that the learned Tribunal rightly held that the issues raised in the application under Order VII Rule 11 of the CPC are triable in nature and it cannot be said that the respondents no. 1 and 2 are entirely bereft of a cause of action.

18. It is submitted that the learned Trial Court rightly dismissed the application and held that the petitioners cannot contest the non-maintainability of the suit on the basis of the GPA and agreement to sell as they themselves trace their title and claim, on the basis of the same.

19. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed and the impugned order passed by the learned Trial Court may be upheld.

20. Heard the learned counsel for the parties and perused the material placed on record.

21. It is the case of the petitioners that their application under Order VII Rule 11 of the CPC ought to have been allowed by the learned Trial Court as the suit was barred under the provisions of Sections 34 and 41(h) of the Act, and the learned Trial Court failed in appreciating the settled position of law





that while deciding an application under Order VII Rule 11 of the CPC only the plaint and the documents filed therewith should be taken into account, and no reliance can be placed on the respondents' written statement.

22. In rival submissions, it is contended on behalf of the respondents no.1 and 2 that the petitioners engaged in fraudulent practice by relying upon forged GPA and sale agreement and therefore the learned Trial Court at the stage of deciding the application under Order VII Rule 11 of the CPC, rightly adjudicated the instant matter by holding that the issues raised are triable in nature and requires proper adjudication which cannot be summarily rejected. Hence, it is prayed that the instant petition may be dismissed.

23. In view of the foregoing submissions, the limited question for adjudication in the instant petition before this Court is whether the learned Trial Court rightly appreciated the settled law while dismissing the application filed under Order VII Rule 11 of the CPC by the petitioners herein.

24. At this juncture, this Court deems it apposite to reproduce the relevant extract of the impugned order wherein the learned Trial Court dismissed the aforesaid application on the ground that the issues raised are triable in nature and accordingly held as under:-

“I have heard the submissions and perused the record. The first thing to note is that both the plaintiffs and defendants no. 1 and 2 trace their title to the suit property to Basanti Devi who has expired as per the averments in para no. 5 of the plaint. The





*difference being that the defendants no. 1 & 2 claim that the property which belonged to Basanti Devi was transferred by her during her lifetime to defendant no. 3 and that the said property was originally sold by one Dhir Chand S/o Sh. Mam Chand etc. to Basanti Devi and defendant no. 3 in different portions. On the other hand plaintiffs claim that the property was actually purchased by their father in the name of his wife Basanti Devi and his younger son defendant no. 3 and that defendant no. 3 was not having any authority to gift the entire suit property of 300 Sq. Yards to his daughter defendant no. 4. This is a case where the issues raised in the application under Order VII Rule 11 CPC are of triable nature. It cannot be said that the plaintiffs entirely bereft of a cause of action. This is yet another case where the parties would have to be put to trial to ascertain as to who is having the better title. The judgments cited by Ld. Counsel for defendants no. 1 and 2 which reiterated the judgment of Hon'ble Supreme Court of India in *Suraj Lamp* are no doubt the settled law but when the defendants no. 1 and 2 themselves trace their title and infact put forth their claim on the basis of GPA, Agreement to Sell that is the usual documents, then, it does not lie in their mouth to contend that a suit on the basis of GPA, Agreement to Sell is not maintainable. **Therefore, present application under Order VII Rule 11 CPC stands dismissed.**"*

25. Upon perusal of the aforesaid extract of the impugned order, it is made out that the learned Trial Court dismissed the application under Order VII Rule 11 CPC while holding that the issues raised in the said application are triable in nature and held that it cannot be concluded at this stage as the plaint filed by the respondents no. 1 and 2 does not lack cause of action. Despite the petitioners' reliance on the settled position of law reiterated in the judgment passed by the Hon'ble Supreme Court in *Suraj Lamp &*





Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656, that a mere GPA or agreement to sell does not create right, title or interest in the immovable property, the learned Trial Court held that an apparent reading of the plaint shows that a cause of action arises in favour of the respondents no. 1 and 2 and the issues raised therein, warrant a proper adjudication, therefore, the suit is not liable to be dismissed at this stage.

26. A bare reading of the relevant extracts mentioned hereinabove transpires that the parties, i.e., the respondents no. 1, 2 and 3 trace their alleged title with respect to the suit property from their mother, i.e., late Smt. Basanti Devi. Therefore, the learned Trial Court deemed it imperative to hold that even the petitioners trace their title and claim in the suit property on the basis of the GPA and agreement to sell documents, which has been challenged in the suit. Therefore, due to the aforesaid reasoning, the petitioners cannot contend that the present suit seeking declaration/cancellation of the sale deeds and gift deeds, does not hold any merits.

27. Before delving into the merits of the instant petition, this Court deems it necessary to consider the settled law of principles with respect to Order VII Rule 11 of the CPC.

28. The provision under Order VII Rule 11 of the CPC is mandatory in nature. It specifies that the plaint “shall” be rejected if it contains anything as mentioned in clauses (a) to (f) of the aforesaid rule. Although the provision has limited application, it confers power upon the Courts to reject a plaint if





the same does not disclose a cause of action or the same is barred by law. The Courts can exercise the power under the aforesaid provision to reject a plaint where the litigation is frivolous and meaningless. It categorically lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the suit on its merits. The settled law for adjudication of a challenge to the suit under this provision is that the plaint is required to be read in its entirety and in case the same falls under any of the grounds of the aforesaid provision, the plaint is liable to be rejected.

29. The purpose of the aforesaid provision is designed and aimed to save the judicial time of the Courts and to ensure that a suit which falls under any of the grounds under Order VII Rule 11 of the CPC and is found meaningless, vexatious and found to be abortive should not be permitted, and accordingly, be rejected.

30. It is observed that the learned Trial Court dismissed the application filed under the aforesaid provision and held that the issues raised in the same are triable in nature as well as the fact that the plaint discloses a cause of action in favour of the respondents no.1 and 2.

31. For the purpose of adjudication of the instant matter, it is imperative for this Court to decide whether the learned Trial Court correctly dismissed the application under Order VII Rule 11 of the CPC and held that the plaint disclosed a cause of action in favour of the respondents no. 1 and 2 and the issues therein are triable in nature.





32. The law with regard to Order VII Rule 11 of the CPC has been discussed time and again by this Court as well as the Hon'ble Supreme Court, and has been recently enunciated in a judgment passed by this Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali*, (2020) 7 SCC 366**, as follows:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent.





The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law. ...

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)





“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji





Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

33. It is observed from the abovementioned judicial *dicta* that while deciding an application under Order VII Rule 11 of the CPC, it should be subjected to the true test of reading the plaint as a whole in its entirety. Upon such reading, if the plaint discloses a cause of action, then the plea taken for the rejection of plaint on their merits would be irrelevant and the same would be liable to be dismissed. On the contrary, the plaint is liable to be rejected when the plain reading of the same does not disclose a cause of action and it is *prima facie* found to be manifestly vexatious and without any merits.

34. The aim behind conferring such power upon the Courts is to ensure that when a cause of action of the party does not arise and a suit is meritless, contrary to the law or non-maintainable under any of the grounds mentioned in the aforesaid provision, the Courts shall not utilise its judicial time in deciding the said matter.

35. The abovesaid law is clear that while deciding an application under Order VII Rule 11 of the CPC, the Courts shall peruse the entire plaint and decide whether a cause of action arises in the said suit, and when the same
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does not reflect a cause of action then the suit is liable to be dismissed under the aforesaid provision.

36. Now advertent to the merits of the instant petition, wherein, this Court shall adjudicate whether the learned Trial Court correctly dismissed the application under Order VII Rule 11 of the CPC and judicially applied the test of reading the plaint in its entirety in order to decide the same.

37. For the purpose of adjudication, this Court will now consider the averments made in the plaint. The relevant portions of which are as follows:

“7. That in July/August 2020 the Plaintiff came to know that Harish Chander Bhardwaj was in good terms with defendant no.2, Jatinder Singh Saini. Both of them worked in the Customs Department of the Govt. of India for 23 years and in the name of making a General Power of Attorney, the said Jatinder Singh created documents of sale of all the above-named properties in his own name as well as in the name of his son, Divjyot Singh Saini, the defendant no.1. On further inquiry, the plaintiff came to know that Harish Chander Bhardwaj, under the influence of defendant no.1 & 2, gifted the 300 sq. yd. plot at Mahavir Enclave to his daughter, Kajol Bhardwaj, who in turn is shown to have sold the same to defendant no.1, son of defendant no.2, vide separate sale deeds dated 16.03.2019 and 16.04.2019. On confronting Harish Chander Bhardwaj with this fact, the plaintiffs came to know that the sale deeds dated 16.03.2019 and 16.04.2019 are sham transactions, as the consideration amount shown therein has not been passed to the vendor. Thus, the sale deeds are void as such. Fraud is writ large on the face of the transaction itself. Harish Chander Bhardwaj had no financial occasion or financial need to sell the property worth crores for Rs.50 lacs. The mention of consideration amount in the sale deeds is only for the sake of name and to give the sale deeds legal





validity. In fact, no consideration was paid for the sale. Defendant no.1 & 2 played fraud upon both Harish Chander Bhardwaj and the plaintiffs in order to usurp their shares in the suit property.

The said sale deeds are also voidable as Harish Chander Bhardwaj was without authority of law to have gifted the joint family property to his daughter, Kajol Bhardwaj, the defendant no.4, since the title of Harish Chander Bhardwaj was itself defective. The sale deeds dated 16.03.2019 and 16.04.2019 executed by his daughter, Kajol Bhardwaj, were also defective and hence, voidable.

It is also said that after the alleged sale deeds dated 06.03.2019 and 16.04.2019, the possession of plot no. 88/3, 300 sq. yds., situated at the village, Palam and presently known as Mahavir Enclave, which was already barricaded from all sides, was forcibly taken by defendant no.1 and defendant no.2 on 08.08.2020.

8. That after coming to know about the objections of the plaintiff, defendants no.1 & 2 have started raising constructions on the suit property. They deserve to be restrained in their illegal acts. Complaints lodged with the police on 22.08.2020 and the Sub-Registrar, Kapashera, on 14.08.2020 have yielded no result. It is likely that the defendants may get electric and water connections on the suit land by virtue of the above-mentioned sham and fraudulently obtained documents.

9. That the sale deeds in question are contrary to law and fraudulently obtained, and therefore, deserve to be set aside. The defendants no.1, 2, 5, and 6 also deserve to be restrained permanently and mandatorily from raising construction on the suit land or getting any connection—water or electricity—to show their possession of it or for any other purpose/s.





10. That the cause of action arose in favour of the plaintiffs and against the defendants when defendant no.3 executed the Gift Deed dated 14.02.2019 in favour of defendant no.4 of a joint family property. The cause of action again arose when defendant no.4 executed the sale deeds dated 06.03.2019 and 16.04.2019 in relation to the suit property without consideration in favour of defendant no.1. The cause of action further arose on 08.08.2020 when defendants no.1 & 2 forcibly took possession of the suit property. The cause of action further arose when defendants no.1 & 2 started construction on the suit property in August 2020, and the plaintiffs had to intervene. The cause of action is still continuing.”

38. For the purpose of adjudication of the instant petition, it is apposite to note that it is a settled position of law that the Court's jurisdiction is confined to perusing the plaint in its entirety for the disclosure of cause of action without delving into the correctness or truthfulness of the claims made therein.

39. Insofar as the plaint is concerned, it is apparent from the same that the respondents no.1 and 2 have pleaded that the respondent no.3 executed the gift deed dated 14th February 2019 in favour of his daughter, i.e., respondent no. 4 and he was not authorised to do the same as the suit property is a joint family property. The respondents no.1 and 2 have also alleged in the plaint that the property documents executed by the petitioners in collusion with respondent no. 3 are liable to be cancelled in view of the fact that they are fabricated and forged.





40. If the averments made in the plaint are taken to be true that the property in question is a joint family property, then exercising the powers conferred upon this Court to allow the application under Order VII Rule 11 of the CPC, would result in respondents no. 1 and 2, being deprived of their claim without granting them an opportunity to prove the same, causing grave miscarriage of justice.

41. It is clear from the judicial *dicta* as discussed in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Supra)***, that once the plaint discloses a cause of action, the application filed under Order VII Rule 11 of the CPC is liable to be dismissed.

42. Applying the aforesaid judgment in the case at hand, this Court is of the *prima facie* opinion that the instant petition involves questions of facts and contentions that necessitate a full trial, for proper adjudication of the same.

43. At this preliminary stage, this Court deems it necessary to mention that it is not required to assess the veracity of the respondents no.1 and 2's claims or to determine the merits of the case, instead, the limited test for adjudication of the instant petition is to decide whether the plaint, when the same is read in its entirety, discloses a cause of action. The respondents no.1 and 2 bear the burden of proving their claim and title in the suit property by way of assertions during the trial, and until such evidence is evaluated, the Court must refrain from passing any judgment on the factual disputes raised in the plaint.





44. It is imperative to note herein that the respondents no.1 and 2 have asserted the fact that learned Trial Court correctly dismissed the application for rejection of plaint as the documents that are being relied upon, i.e., GPA and agreement to sell, are forged and fabricated in order to snatch away their title in the suit property, thereby alleging fraudulency of documentary evidence.

45. At this juncture, this Court deems it crucial to emphasise on the judgment passed by the Hon'ble Supreme Court in *Shaukathussain Mohammed Patel v. Khatunben Mohmmmedbhai Polara, (2019) 10 SCC 226*, wherein it was held to the extent that the plaint cannot be rejected when a fraud is alleged in a suit, and proper opportunity shall be provided to the parties to adduce their evidence for the adjudication of the same, and thus, allowing an application under Order VII Rule 11 of the CPC would result in prejudice to the respondents.

46. Therefore, applying the aforesaid judgment to the present case, this Court finds force in the arguments advanced on behalf of the respondents no. 1 and 2 that a plaint cannot be rejected when a fraud is alleged in the suit. This Court finds that the aforesaid issue is triable in nature.

47. Furthermore, it is observed that the petitioner has also contended that the plaint was liable to be dismissed as the respondent nos. 1 and 2 are not entitled to seek the reliefs prayed in the same. It has been argued that they have failed to seek the relief of declaration of transfer documents dated 20th June, 1983 and 26th March, 1987, executed by their late mother, in favour of





the respondent no.3, on the basis of which the respondent no.3 became the lawful owner of the entire suit property consisting of 300 sq. yards.

48. At this juncture, this Court finds it apposite to mention the law laid down by the Hon'ble Supreme Court in case of ***Gurdev Singh Versus Harvinder Singh, (2022) SCC OnLine SC 2193***, wherein it was observed that a plaint cannot be rejected merely on the ground that the plaintiff is not entitled to any reliefs in the suit.

49. While placing reliance on the judgment of ***Gurdev Singh (Supra)***, this Court is of the view that a plaint cannot be dismissed solely on the ground that the plaintiff has not prayed for specific reliefs. It is a settled principle of law that a plaint under Order VII Rule 11 of the CPC cannot be rejected merely on the ground that the plaintiff may not ultimately succeed in obtaining the reliefs sought therein. Moreover, the cause of action as disclosed in the plaint must be considered, and if it reveals that the issue therein is triable, the plaint shall not be rejected under Order VII Rule 11 of the CPC.

50. Therefore, this Court finds that the averment made on behalf of the petitioners that the suit is liable to be dismissed in view of the fact that the respondents no. 1 and 2 failed to seek cancellation the relief of declaration of transfer documents dated 20th June, 1983 and 26th March, 1987 is meritless.

51. Accordingly, this Court finds no force in the arguments of the petitioners that the suit is liable to be dismissed under Order VII Rule 11 of the CPC.





52. Insofar as the scope of revisional jurisdiction under Section 115 of the CPC is concerned, it is clear that the exercise of the supervisory power conferred upon the Court is discretionary and a petition filed under the aforesaid provision shall not be entertained by interfering with the findings of the Court below unless there is a jurisdictional error or a legal irregularity on the apparent face of it.

53. As already mentioned above, the learned Trial Court held that the issues are triable in nature in view of the fact that the suit property is alleged to be a joint family property and a cause of action arises in favour of the respondents no. 1 and 2.

54. Taking into consideration the foregoing discussion on law with regard to the revisional jurisdiction under Section 115 of the CPC, the abovementioned facts, averments and the settled position of law in the judicial precedents with respect to Order VII Rule 11 of the CPC, this Court is of the opinion which is consistent with that of the learned Trial Court that the issues in the instant matter are triable in nature and warrants a proper trial.

55. In light of the same, this Court finds no merit in the instant petition to interfere with the impugned order under its revisional jurisdiction under Section 115 of the CPC.

56. Therefore, this Court is of the considered view that there is no illegality with the impugned order dated 8th June, 2023, passed by learned Additional District Judge-03, South-West District, Dwarka Courts, Delhi in





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CS DJ ADJ No. 393/2020 titled as “*Satish Chander Bhardwaj & Anr vs. Divjot Singh Saini & Ors.*”, and the same is upheld.

57. Accordingly, the instant revision petition being bereft of any merit, stands dismissed. Pending applications, if any, also stands dismissed.

58. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 19, 2024

NA/sm/mk

Click here to check corrigendum, if any

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Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 26/09/2024
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